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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,943	11/21/2003	Sang-You Kim	123034-05093584	2913

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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/718,943	KIM ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-6 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 11-21-03 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: on line 7, "grinded" should be the "ground". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite in that it is not known what is considered to be a "high pressure".

Claim 5 is indefinite in stating that high temperatures and pressures are from 40 to 70C. This is not seen. Also, no pressure is stated in order to know what is considered a high pressure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura (2004/0052924 A1) in view of Jang (1002476860000) and Kim et al. (10200000037091) (abstract only) and Kanehiro et al. (2002/0182288 A1) .

Kimura disclose a process of making a germinated brown rice, by germinating the brown rice for 24 hours at zero degree or from 30 to 35 C for 12 hours, in an acid aqueous solution which is aerated with air or oxygen and dried (0023, 0024, 0028, 0029, 0030). Claim 1 differs from the reference in the step of grinding the brown rice to a particular weight level and in changing the germination water at various intervals and in heating the brown germinated rice to within the claimed time and temperature. However, Jang discloses that it is known to pound brown rice before, germinating it (abstract). No patentable distinction is seen at this time between grinding and pounding rice absent a showing of unexpected results when the rice is ground to a particular degree. Kim discloses supplying and circulating water in a tank in which brown rice is germinating, and supplying water again. Also, nothing new is seen in changing the

water, which is within the skill of the ordinary worker, as it is known that bacteria grow in water, which is left setting. The reference to Kimura discloses that the cereal is dried with hot air (0030). No patentable distinction is seen at this time in heating to a high temperature and pressure, which amounts to retorting, which is another well known process of cooking foods. Also, Kanehiro et al. disclose a process of treating brown rice by germinating in fresh circulating water with oxygen for about 50 hours and then steam cooking (para. 0009, 00010). Therefore, it would have been obvious to remove some of the rice skin as shown by Jang in the process of Kimura since Jang also then germinates the rice and to change water and further heat treat the rice as disclosed by Kanehiro et al.

A pH of less than 6 as in claim 2 is disclosed by Kimura and a termination temperature of from 0-35 C (page 2, (0024 and col. 2, lines 1-9).

Nothing new is seen in the limitations of claim 3, which amounts to retorting a rice product. Nothing new is seen in further washing the rice with water, which is a known health measure. In retorting canning, treating with a high temperature and rapidly cooling is common. Also the reference to Kimura discloses that their germinated cereals are made stable by heat-treatment in general (0030). Certainly, retorting of low acid foods is extremely common, as in all canned foods. Therefore, it would have been obvious to heat treat rice with a known canning method such as retorting, which uses high temperatures and pressures.

Claim 4 further requires that the final water content is from 32-40% by weight. The discovery of an optimum value of a result effective variable is ordinarily within the

skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). In developing a germinated rice product, properties such as water content is important because it affects the taste and consistency of the product. It appears that the precise ingredients as well as their proportions affect the water content, and thus are result effective variables, which one of ordinary skill in the art would routinely optimize. Therefore, it would have been obvious to use a particular water content when developing a canned or packaged rice product.

The product has been shown above by the above combination as in claim 6. Kimura, in particularly discloses a germinated brown rice ((abstract).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 1-4, 6 above, and further in view of Hiromichi et al. (1029910111002, abstract only).

Treatment such as drying with hot air as in claim 5 could have easily been at from 40-70 C . The final water content is seen as being within the skill of the ordinary worker because Kimura discloses that the cereal can be made stable, using known heat treatments, and nothing is seen that in using hot air or freeze drying a cereal product that it would not have the claimed water content. Also, Hiromichi et al. disclose drying germinated brown rice to a water content of from 10-18%. Therefore, it would have been obvious to heat treat as shown by Kimura and to dry to a particular water content as shown by Hiromichi et al. in the process of Kimura, since they are both drying germinated rice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 9-1-06

H. Pratt

HELEN PRATT
PRIMARY EXAMINER